IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16303 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTABEN ASHARAM,W/F LATE ASHARAM MOHANDAS EX.ART KHALASI - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
MR MS TRIVEDI for Petitioner(s) : 1,MS PRANJAL M TRIVEDI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MRS SHILPA R SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 19/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned Counsel Shri Trivedi for the petitioner and Ms. Shilpa Shah for the respondents.

Petitioner – Shrimati Kantaben Asharam widow of late Asharam, Ex- Khalashi, Western Railway, Surendranagar, has filed this petition under Articles 226 and 227 of the Constitution and prayed that the impugned orders passed in MA/893/1, MA/894/01 AND MA/895/01 in OA No. 69/96 by the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, (for short “the Tribunal”) be quashed and set aside and the respondents be directed to give family pension to the petitioner.

Original applicant – Asharam Mohandas Khalashi was removed from service by an order dated 18.2.1992 passed by the Disciplinary Authority on the ground of remaining absent from duty unauthorizedly for a period of more than a year, who challenged the said order in Appeal before the Appellate Authority. However, his Appeal was also dismissed. Though the remedy of Revision was available to him, he straightway preferred to approach the learned Tribunal by way of OA No.649 of 1995. With certain observations, the learned Tribunal permitted the Applicant-Shri Asharam to withdraw his OA with liberty to approach the Revisional Authority. Accordingly, the Revision filed by Shri Asharam Khalasi before the Revisional Authority against the

impugned order passed by the Disciplinary Authority was dismissed by order dated 13.1.1995. However, Thereafter, the Revision Application was filed by the husband of the petitioner was also rejected by the Authority by a speaking order dated 12.4.1995. The same was not produced on record by the present petitioner, widow of Asharam Khalashi. However, a letter dated 18.4.1995, addressed by the Authority, intimating the decision of the competent Authority is produced which is at Annexure : D to the petition. Ms. Shilpa Shah, learned Counsel for the respondent produced on record the copy of the order passed by the Authority dismissing the revision of Asharam Mohandas.

With the dismissal of Revision Application, the applicant Asharam once again approached the learned Tribunal by way of OA No.69 of 1996 and challenged all the impugned orders passed by the Disciplinary Authority as well as the Revisional Authority. However, he died in 1998. On his death the learned Tribunal dismissed his OA No.69 of 1998 as abated.

The impugned order dated 30.8.2001 passed by the learned Tribunal dismissing OA as abated clearly shows that though the original applicant died way back in 1998 no request was made for setting aside the abatement. The matter was adjourned on earlier occasion on 13.8.2001 till 30.8.2001 with a view to give one more chance to the applicant's Counsel to take steps, however, no steps were taken, therefore, the OA was dismissed as being abated.

For setting aside the abatement, three

Applications being MA No.893/01, MA 894/01 and MA 895/01 were filed for condonation of delay in filing the Application for setting aside the abatement and for bringing on record the Legal Representatives of deceased employee on record of the case. However, all the three Applications were dismissed by the learned Tribunal by a common order, which is a Annexure : A, on the ground that the cause of OA does not survive any more after the death of the original applicant Asharam. When the original applicant himself has died then there was no question of reinstating him in service. This is challenged in this petition.

From the impugned order dated 30.8.2001 passed by the learned Tribunal dismissing OA as having become abated, it is clear that though the original applicant died way back in 1998, no steps were taken for a period of three years for setting aside the abatement by bringing Legal Representatives of the deceased on record of the case. Under the circumstances, with the death of deceased the original applicant-Asharam when the learned Tribunal has rejected all the three Applications for condonation of delay in filing the Application for setting aside the abatement by giving cogent reasons, then there is no question of interference for this Court on peculiar facts of this case.

The question of grant of family pension is left open. The applicant may approach the Authority for family pension. If the applicant approaches the Authority within one month from today by way of proper representation for family pension then the

same may be considered and decided by the Authority strictly in accordance with law.

In view of the above discussion this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA,J.)

(H.B.ANTANI, J.)

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